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OFFICE OF THE ATTORNEY GENERAL

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June 30, 2008

Honorable Harold S. Baer
United States District Court
Southern District of New York
United States Courthouse / 500 Pearl Street
New York, New York 10007

RECEIVED
JUL 07 2008
State Counsel Division
Litigation Bureau
HAROLD S. BAER
U.S. DISTRICT JUDGE
S.D.N.Y.

Re: Gordon Vasquez v. Loiodice, et al./Docket No. 07 Civ. 7164 (HB)

Dear Judge Baer:

MEMO ENDORSED

On Friday, June 27, 2008, I received forwarded from the Court a letter from plaintiff Mr. Vasquez to the Court. This Office did not receive the letter directly from Mr. Vasquez. In the letter, Mr. Vasquez indicates that he did not receive any motion papers from defendants in connection with the above-referenced matter, even though the Court and the parties had contemplated that defendants would be making such a motion to be served on May 22, 2008, and which would be filed with the Court on July 7, 2008.

While our records indicate that Mr. Vasquez was served on May 22, 2008 (by regular mail) with such motion papers, we cannot confirm with the Green Haven Correctional Facility personnel that Mr. Vasquez did in fact receive the papers (this Office has an envelope addressed to Mr. Vasquez with an incorrect amount of postage still in its files). Accordingly, given that Mr. Vasquez complains that he has not received the motion papers, we have, by cover of this letter, forwarded another copy of the papers (a motion and supporting memorandum of law, along with a notice to the pro se inmate, all dated May 22, 2008) to him by federal express today.

We respectfully must request that Mr. Vasquez be granted additional time to respond to defendants' motion: until July 31, 2008, with a reply from this Office by August 7, 2008. We believe that the issues on the motion to dismiss, while still the subject of State court litigation in the Third Department (or the Court of Appeals) are capable of resolution in the federal courts upon motion, in light of direction given by the Court of Appeals' in Matter of Garner v. New York State Dept. Of Correctional Services, 2008 NY Slip Op 03947, 2008 N.Y. LEXIS 1051 (April 29, 2008) and a group of cases combined under People v. Sparber, 2008 NY Slip Op 3946, 2008 N.Y. LEXIS 1053 (April 29, 2008). Thank you for your attention.

*Plaintiff's response to the motion
will be filed by July 31, 2008. A reply
will be filed by August 8, 2008.*

Sincerely,

Michael J. Keane
Assistant Attorney General

7/7/08
SO ORDERED

THEODORE H. KATZ

UNITED STATES MAGISTRATE JUDGE

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TO COUNSEL OF RECORD ON 7/7/08